

December 23, 2008

**DECISION AND ORDER
OF THE DEPARTMENT OF ENERGY**

Appeal

Petitioner: Charles D. Saunders

Filing Date: December 2, 2008

Case Number: TFA-0282

This Decision concerns Charles D. Saunders' Appeal from a determination that the Department of Energy's (DOE) Office of Legacy Management (OLM) issued to him on November 20, 2008. In that determination, the OLM responded to Mr. Saunders' request under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, as the DOE implemented in 10 C.F.R. Part 1004. This Appeal, if granted, would require the OLM to perform an additional search and either release newly discovered documents or issue a new determination justifying their withholding.

I. Background

Mr. Saunders worked at the DOE's Rocky Flats Site. On April 28, 2008, he filed a FOIA request with the OLM seeking "(1) notes from the Criticality Engineering Department about radiation levels in Building 707, and (2) calculations for any amounts of plutonium recovered from the duct work in Building 881." October 28, 2008, Letter (the Gatlin Letter) from Verlette L. Gatlin, Deputy Director, Office of Information Resources (OIR), to Mr. Saunders at 1. In a letter dated June 12, 2008, the OLM informed Mr. Saunders that he did not reasonably describe the records he was requesting in part (1) and would therefore be required to reformulate that part of his request. That letter also informed Saunders that the OLM's search for documents responsive to part (2) of his request did not locate any responsive documents.

As a result of consultations with OIR, Mr. Saunders' reformulated part (1) of his request to "seek any studies that indicate the amount of radiation or plutonium absorbed by employees from 45 minutes of exposure to ingots of plutonium in building 707 from June 1984 to June 1985." Gatlin Letter at 1. On November 20, 2008, OLM issued a Determination Letter in which it stated that its search under the reformulated request had not located any responsive documents. On December 2, 2008, Mr. Saunders filed the present Appeal with OHA.¹

II. Analysis

In responding to a FOIA request for information, the courts have established that an agency must "conduct[] a search reasonably calculated to uncover all relevant documents. . . ." *Truitt v. Dep't*

¹ The Determination Letter addresses only the reformulated part (1) of Mr. Saunders' April 28, 2008, request and does not address part (2) of that request.

of State, 897 F.2d 540, 542 (D.C. Cir. 1990) (citations omitted). “[T]he standard of reasonableness which we apply to agency search procedures does not require absolute exhaustion of the files; instead, it requires a search reasonably calculated to uncover the sought materials.” *Miller v. Dep’t of State*, 779 F.2d 1378, 1384-85 (8th Cir. 1985); *accord Truitt*, 897 F.2d at 542. We have not hesitated to remand a case where the search conducted was in fact inadequate. *See, e.g., Butler, Vines and Babb, P.L.L.C.*, (Case No. VFA-0098) (1995) (remanding where there was “a reasonable possibility” that responsive documents existed at an unsearched location).²

We contacted the OLM to request additional information so that we could evaluate its search. We learned that the OLM conducted electronic searches in the OLM’s Electronic Recordkeeping System (ERKS) for studies that indicate the amount of radiation or plutonium absorbed by employees from 45 minutes of exposure to ingots of plutonium in building 707 from June 1984 to June 1985. OLM informed us that “[s]earch terms utilized were: ingot and plutonium; ingot and pu; ingot and study; ingot and dose; 45 and minute and plutonium; 45 and minute and pu; 45 and minute and study; 45 and minute and ingot; 45 and minute and dose; Forty-five and minute and plutonium; Forty-five and minute and pu; Forty-five and minute and study; Forty-five and minute and ingot; and Forty-five and minute and dose.” December 11, 2008, Electronic Mail Message from John V. Montgomery, Freedom of Information Act Officer, Office of Legacy Management to Steven L. Fine, OHA Staff Attorney. As a result of this search, no responsive documents were located.

Based on this information, we conclude that the OLM’s search for responsive documents was reasonably calculated to uncover the information described in Mr. Saunders’ reformulated request, and was therefore adequate. Therefore, we will deny Mr. Saunders’ Appeal.

It Is Therefore Ordered That:

- (1) The Appeal that Charles D. Saunders filed on December 2, 2008, OHA Case No. TFA-0282, is denied.
- (2) This is a final order of the Department of Energy from which any aggrieved party may seek judicial review pursuant to 5 U.S.C. § 552(a)(4)(B). Judicial review may be sought in the district in which the requester resides or has a principal place of business, or in which the agency records are situated, or in the District of Columbia.

Poli A. Marmolejos
Director
Office of Hearings and Appeals

Date: December 23, 2008

² Decisions issued by the Office of Hearings and Appeals (OHA) are available on the OHA website located at <http://www.oha.doe.gov>. The text of a cited decision may be accessed by entering the case number of the decision in the search engine located at <http://www.oha.doe.gov/search.htm>.

